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157

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/668,953	09/23/2003	John McIntyre	JM-1-gw	3317
7590	09/13/2006			
Michael I. Kroll 171 Stillwell Lane Syosset, NY 11791			EXAMINER PHILOGENE, PEDRO	
			ART UNIT 3733	PAPER NUMBER
DATE MAILED: 09/13/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/668,953

**Applicant(s)**

MCINTYRE, JOHN

**Examiner**

Pedro Philogene

**Art Unit**

3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-9,12,13 and 15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-9,12,13,15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,3-9,12,13,15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Siebrandt (2,435,850) in view of Nunamaker et al. (4,604,996).

With respect to the above claims, Siebrandt discloses an end cap (16) for the exposed ends of the pins and rod of an external fixation device, in combination comprising a fixation device, as best seen in FIG.1 for forming an exoskeletal brace for use on a limb of a patient, the fixation device having at least one connecting rod (5) a plurality of spaced connecting clamps (12,14) on the connecting rod, and a plurality of fixation pins (9) extending through each of the connecting clamp, the fixation pins (9) having free end away from the connecting clamps (12,14), the connecting rod (5) having first and second opposite ends; as best seen in the FIGS.; a separate end cap (16) releasably positioned on the ends of the fixation pins for each connecting clamp leaving a space between the end caps; wherein the end cap is having first and second opposing ends and a first and second opposing side surface, the first side surface being generally disposed away from the fixation pins and the second side surface being generally disposed toward the fixation pins, the second side surface having a cavity, as best seen in FIGS.2-4, therein.

Art Unit: 3733

It is noted that Siebrandt et al did not teach of an end cap of oval shape, and a pliable material filling the cavity and wherein the fixation pins are press-fitted in the pliable material; as claimed by applicant. However, in a similar art, Nunamaker et al., column 4, lines 62-68, column 5, lines 1-62, evidences the use of an end cap with pliable material filling the cavity and pins press-fitted in the pliable material in addition to embedding the ends of the pins will also act as a soft cushion to protect the mammal from contact with other parts of the apparatus.

Therefore, given the teaching of Nunamaker et al., it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Siebrandt et al, as taught by Nunamaker et al so that in addition to embedding the ends of the pins will also act as a soft cushion to protect the mammal from contact with other parts of the apparatus.

As to the end caps being separated, as claimed by applicant; it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the end caps of Siebrandt et al separable, thereby creating space between the end caps, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177,179.

Regarding the different shapes, as claimed by applicant. These particular configurations of the cover or end cap are nothing more than one of numerous configurations a person of ordinary skill would have found obvious for the purpose of providing a surface to the cover or end cap. See *in re Dailey*, 149 USPQ 47 (CCPA 1976). Regarding the package containing the end cap, carrying the end cap in a

package is old and well known in the art; as best seen in the pertinent art cited in the previous office action.

***Response to Amendment***

Applicant's arguments, see Remarks, filed 7/12/06, with respect to the rejection(s) of claim(s) 1-15 under 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Siebrandt/Nunamaker et al.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

4,564,007	1-1986	Coombs et al.
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Coombs et al disclose a rectangular cavity in the end cap.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

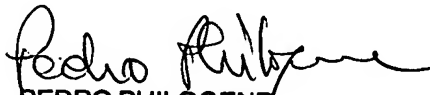
Art Unit: 3733

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (571) 272-4716. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272 - 4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
PEDRO PHILOGENE  
PRIMARY EXAMINER

Pedro Philogene  
September 10, 2006